

Ex. E

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UNITED STATES DISTRICT COURT

3

SOUTHERN DISTRICT OF NEW YORK

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UMAR GUIRA, an infant, by his mother and

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natural guardian ASSETA NANEMA, and ASSETA

7

NANEMA, individually,

8

Plaintiffs,

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- against -

Index No.:

21-cv-02615-VEC

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UNITED STATES OF AMERICA,

11

Defendant.

12

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13

March 16, 2022

14

2:00 p.m.

15

VIRTUAL DEPOSITION of

16

DR. DANIEL ADLER, appearing on behalf of the

17

Plaintiff herein, taken by the Defendant,

18

pursuant to Notice, taken before Nicole L.

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Basile, a Notary Public within and for the

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State of New York.

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1 ADLER

2 A. I use a dictation service. It's
3 dictated into a recording device, the file is sent
4 over the internet and someone transcribes it.

5 Q. Other than the typist you referred to
6 and yourself, did anyone else work on this report?

7 A. No.

8 Q. You have produced two reports in this
9 case. Is that correct?

10 A. Correct.

11 Q. And there's one which we're looking at
12 now, which is dated November 19, 2021, which appears
13 at Pages 1 through 7 of this PDF and beginning at
14 Page 8 of the PDF is a second report dated October
15 19, 2020. Are these the two reports that you
16 prepared in this case?

17 A. They are.

18 Q. Did your opinions change in any way
19 between these two reports?

20 A. No.

21 Q. Which one of these two reports contains
22 a complete set of your expert opinions in this
23 matter?

24 A. I would say the most, you know, the 2021
25 report I think was designed to update and replace

1 ADLER

2 the other report.

3 Q. So when we talk about your report in
4 this matter, can we have the understanding that
5 we're talking about this November 2021 report?

6 A. Yes.

7 Q. Have you had a chance to review your
8 report between November 19, 2021 and today?

9 A. I have.

10 Q. And in reviewing your report, did you
11 find anything that you wanted to change or correct?

12 A. No.

13 Q. And is there anything that you -- any
14 materials that you have reviewed since preparing
15 this report, that have changed your opinions in
16 anyway?

17 A. No.

18 Q. Did you reach conclusions in this
19 matter?

20 A. Yes. They're outlined in my report.

21 Q. And if you could provide to me a general
22 summary of what conclusions you reached in this
23 matter?

24 A. Sure. Umar Guira has a permanent
25 brachial plexus injury, involves his right arm, a

1 ADLER

2 what she believes would be the impact of the arm on
3 his future as a vocational expert. As I said
4 earlier, I don't testify as a vocational expert. I
5 don't offer jobs and -- but I think that she is
6 suggesting that some accommodations would be
7 required going forward.

8 Q. Are you offering an opinion, one way or
9 another, in a response to what she's opining on?

10 A. I wouldn't offer an opinion as a
11 vocational expert. I would offer an opinion as a
12 neurologist saying that the types of things that she
13 refers to make sense to me neurologically. In terms
14 of the types of needs that he would require and she
15 does -- and she does base -- repeats also on Dr.
16 Molofsky's examination, which I, again, I said I'm
17 in general agreement with.

18 Q. Well, I think we can turn to causation.
19 Are you offering an opinion as to what caused Umar
20 Guira's brachial plexus injury?

21 A. Yes.

22 Q. And what is the opinion that you are
23 offering?

24 A. The head moved in a way to stretch the
25 nerves beyond their point of tolerance and there was

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2 tearing of the -- of the fifth and sixth cervical
3 nerves in some form. Probably a neuroma, which is a
4 scar that involves the fifth and sixth cervical
5 nerves and that this permanent injury occurred after
6 the head delivered. Dr. Bui put forth efforts to
7 deliver the baby and in doing so caused the nerves
8 to be stretched and torn.

9

Q. And what is the basis of this opinion?

10

A. The totality of the medical record, the
11 fact that the arm was weak immediately after birth
12 proves that it's related to a labor and delivery
13 event, and my opinion as a pediatric neurologist
14 that injuries of this type do not occur at anytime
15 in a healthy newborn, meaning, without other medical
16 conditions or deformities does not occur except
17 after the head delivers and the doctor moves the
18 head.

19

Q. Are there specific sources of medical
20 literature that you relied upon in reaching that
21 opinion?

22

A. Pediatric neurology textbooks refer to
23 this injury occurring in this matter with traction,
24 meaning, stretching of the nerves is the cause,
25 which is related to the delivery process and

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2 goes onto say, "with further analysis, theory
3 emerges concerning alternative phenomenon that may
4 be at play in the pathogenesis of non-shoulder
5 dystocia BPP seems biologically implausible that
6 hypoxic stress would produce a preferable nerve
7 injury. Therefore, associated with fetal acidosis."
8 And then it goes onto say, "decreased muscle tone
9 associated with acidosis may adversely affect fetal
10 posture and this maladaptation may predispose" and
11 it goes onto say "the injury". So that's -- that's
12 my opinion.

13 Q. I'm gonna ask you, was there a shoulder
14 dystocia in this case?

15 A. In your case, no. But -- but -- but
16 there are at least two articles that suggest that
17 shoulder dystocia is not appreciated in every
18 instance when a shoulder dystocia has in fact
19 occurred. I'm not saying that Dr. Bui missed the
20 diagnosis because that's a post obstetrical
21 diagnosis of an obstetrician into whether shoulder
22 dystocia was present or not. But I would say that
23 based on literature that -- that I understand, that
24 the mere fact that someone says that there wasn't
25 shoulder dystocia doesn't mean that it's true. And

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2 if you look at my report, I'm not saying that
3 shoulder dystocia is required. I'm saying the head
4 delivered. I'm not writing the head delivered in
5 the presence of a shoulder dystocia. I'm simply
6 saying the head delivered and then the head was
7 moved, and that caused the injury. There is no --
8 I'm gonna say one other thing. There is no proof in
9 this case in the medical records that a posterior
10 shoulder in this case came into contact with the
11 sacral promontory in anyway whatsoever. So to say
12 that it was posterior shoulder got injured there,
13 that would be pure speculation. They don't know
14 that that happened. They're just saying -- he said
15 those things happen so it happened. I don't think
16 that's right.

17 Q. Is that similar to your conclusion that
18 there must have been improper traction because an
19 injury occurred?

20 A. No. I -- I'm -- I'm -- first of all, I
21 don't use the word traction in my report and I
22 certainly wouldn't say under any circumstance, that
23 Dr. Bui acted improperly, because that's an
24 obstetrical opinion. And I'm not saying that. I'm
25 simply saying that the head delivered, Dr. Bui moved

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2 the head and the injury was the result. I'm not
3 qualifying the movement that she created. I'm
4 simply saying she did.

5 Q. What is the basis of your conclusion
6 that that movement is what caused the injury?

7 A. An injury of this like had never been
8 reported to occur on intrauterine basis. And any
9 newborn that was healthy and non-asphyxiated. This
10 baby was healthy and non-asphyxiated. Therefore, the
11 injury could not occur, had never occurred, has
12 never been reported to occur on an intrauterine
13 basis. It must and can only occur after the head
14 delivers and then the doctor moves the head. That's
15 the only way it occurs, in my opinion. That's the
16 basis of my opinion in this case. It doesn't occur
17 in any other way, other than in manner in which I'm
18 defining. We know the head was moved and that's the
19 cause of the injury.

20 Q. Are you offering any sort of opinion as
21 to how much of the movement of the head is required
22 for the injury to have occurred?

23 A. No. That's an obstetrical opinion,
24 meaning -- or how the head was moved. You know,
25 there's experiments that say if you move the head

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2 off axis more than 30 to 45 degrees, you create a
3 degree of tension along the nerves that puts them at
4 risk. But I would make that statement but that's a
5 general statement. I'm not saying what Dr. Bui did
6 or didn't go in terms of how far the head moves or
7 far she moved the head, other than it's clear that
8 she moved it in a matter sufficient to cause the
9 injury.

10 Q. And your basis for the conclusion that
11 she must have moved the head is nature of the
12 injury?

13 A. Correct. The injury is proof of what
14 happened.

15 Q. I'm getting close to the end.

16 Let me ask you -- let me ask you about a
17 statement on Page 7 of your report, which I will --
18 sorry. I hit the wrong button.

19 A. Page 7?

20 Q. Yes. Page 7 of your report. In the top
21 paragraph you make the statement at the end of that
22 top paragraph, "all of the treatment provided to
23 Umar Guira as a result of these permanent and
24 continuing neurological disabilities has been
25 medically necessary and appropriate." What